

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

JUNE -4 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ALONZO M.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY and
MARCOS C.,

Appellees.

2 CA-JV 2009-0013
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 09779200

Honorable Patricia G. Escher, Judge

AFFIRMED

Peter G. Schmerl

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Judge.

¶1 Alonzo M. appeals from the juvenile court’s order terminating his parental rights to his son, Marcos C. He contends there was insufficient evidence to support the court’s termination of his parental rights on the grounds of abandonment and the term of Alonzo’s incarceration. *See* A.R.S. § 8-533(B)(1), (4). We will not disturb a juvenile court’s order terminating parental rights unless the order is clearly erroneous. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶2 “To justify termination of the parent-child relationship, the [juvenile] court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child.” *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 12, 995 P.2d 682, 685 (2000); *see also* § 8-533(B). Alonzo does not challenge the juvenile court’s determination that termination of his rights was in Marcos’s best interests. Because we conclude there was sufficient evidence to support the court’s termination of parental rights based on Alonzo’s incarceration, we do not address his arguments related to the court’s finding that he abandoned Marcos. *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205 (“If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.”).

¶3 Termination of a parent’s rights may be justified if a “parent is deprived of civil liberties due to the conviction of a felony” and “the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.” § 8-533(B)(4). No “‘bright line’ definition” exists “of when a sentence is sufficiently long to deprive a child of

a normal home for a period of years.” *Michael J.*, 196 Ariz. 246, ¶ 29, 995 P.2d at 687. But the juvenile court must:

consider all relevant factors, including, but not limited to: (1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child’s age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue.

Id.

¶4 In this case, the juvenile court found Alonzo had been convicted of aggravated assault with a deadly weapon or dangerous instrument and sentenced to 3.5 years’ imprisonment before Marcos was born in June 2007; Alonzo’s earliest possible release date is November 2009; and as of the termination hearing, Marcos had never met Alonzo and had “no relationship with him.” The court also noted Marcos had not resided with his mother since he was three months old and she had relinquished her parental rights to him. The court concluded that, because Alonzo “would need a period of months to develop a relationship with his son and demonstrate that he could safely and appropriately parent him,” Alonzo’s incarceration would have effectively “deprive[d] Marcos of a normal home for the first three years of his life, at minimum.”

¶5 Alonzo does not directly challenge the juvenile court’s underlying factual findings. He contends only that his incarceration cannot deprive Marcos of a normal home for a period of years because “[h]is release is less than one year away” and “there is no

evidence that [Alonzo] will need services” or that he “cannot parent his son immediately” upon his release. But the court properly considered the entire length of Alonzo’s incarceration. *See James S. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 351, n.3, 972 P.2d 684, 687 n.3 (App. 1998). It is uncontested that “assuming [Alonzo] is released in November 2009, he will have been absent from Marcos[’s] life for two and one-half years.” And the court reasonably concluded that, given Marcos’s age and the complete absence of a parent-child relationship between him and Alonzo, an additional period of months would be required to establish such a relationship between them. Moreover, Alonzo’s apparent contention that Marcos could be removed from his foster family, with whom he had been living since he was approximately three months old and to whom he was “closely bonded,” and placed with Alonzo without any intervening services is simply unreasonable and unsupported by anything in the record other than Alonzo’s mere “belief” that “kids love [him], even if they don’t know [him].”

¶6 Given the factors identified in *Michael J.* and those expressly found by the juvenile court in this case, the court did not clearly err by terminating Alonzo’s parental rights to Marcos. The termination order is, therefore, affirmed.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge